

1 BARRY W. ROREX (AZ Bar #025910)  
LAW OFFICE OF BARRY W. ROREX  
2 2 E. CONGRESS, SUITE 900  
TUCSON, AZ 85701  
3 Telephone: (520) 495-7596  
Facsimile: (520) 838-8061  
4 Email: barry@brorexlaw.com  
Attorney for Debtors Antonio Gonzales and Veronica Gonzales  
5

6 IN THE UNITED STATES BANKRUPTCY COURT  
7 FOR THE DISTRICT OF ARIZONA

8 In re:

9 Antonio Gonzales and Veronica Gonzales,  
10 Debtors.

Case No. 4:09-bk-21243-JMM  
Proceedings under Chapter 13

11 U.S. Bank, National Association, as successor  
trustee to Bank of America, N.A. as successor  
12 by merger to LaSalle Bank N.A., as Trustee  
for Merrill Lynch First Franklin Mortgage  
13 Loan Trust, Mortgage Loan Asset-Backed  
Certificates, Series 2007-3,

Adversary Proceeding  
Case No.: 4:09-ap-01554-JMM

14 Secured Creditor,

**COMPLAINT TO DETERMINE VALIDITY  
OF CLAIM**

15 v.  
16

17 Antonio Gonzales and Veronica L. Gonzales,  
Debtors; Dianne C. Kerns, Trustee. Trustee,

18 Respondents.  
19

20 Debtors, Antonio Gonzales and Veronica Gonzales, by and through the undersigned attorney,  
21 hereby object to the Claim filed by alleged Secured Creditor U.S. Bank, National Association, as  
22 successor trustee to Bank of America, N.A. as successor by merger to LaSalle Bank N.A., as Trustee  
23 for Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates,  
24 Series 2007-3 ("U.S. Bank"), initiate an adversary proceeding to determine the validity of the Claim  
and show as follows:  
25

**BACKGROUND**

- 26  
27 1. Debtors Antonio and Veronica Gonzales filed a bankruptcy petition under Chapter 13 on  
28 August 31, 2009.

2. On or about September 15, 2009, by their attorney Mark Bosco of Tiffany & Bosco, P.A., U.S. Bank filed Claim No. 3 in Debtors' case, asserting an obligation secured by a mortgage on real property later identified as being located at 1384 W Pinedale Ave, Bloomington, California and alleging principal owing in the amount of \$342,590.73 and arrearages and other charges totalling \$27,813.71.
3. On September 16, 2009, undersigned counsel sent a letter to counsel for U.S. Bank, informing them that the claim was filed in error as Debtors had no knowledge of any such property and requesting that the claim be withdrawn. A copy of the letter is attached as Exhibit "A".
4. Instead of withdrawing the claim, U.S. Bank filed an Amended Claim Number 3 on September 25, 2009 increasing the alleged amount of arrearages due on the claim.
5. On September 28, 2009, U.S. Bank filed an objection to the Chapter 13 Plan proposed by Debtors on the basis that no provision had been made for paying this obligation.
6. On October 2, 2009 Debtors' attorney sent a second letter to counsel for U.S. Bank, informing them that the property did not belong to Debtors and that they were filing a claim against the wrong party. A copy of the second letter is attached as Exhibit "B".

#### **OBJECTION TO CLAIM**

7. Debtors object to the validity of the U.S. Bank Claim.
8. This is an adversary proceeding pursuant to Rule 7001(2) Fed.R.Bankr.P.
9. This is a core proceeding pursuant to 28 U.S.C, § 157(b)(2)(B)(C)(J)(K).
10. The U.S. Bank claim is invalid in its entirety in that Debtors have never owned real property in Bloomington, California, have never granted a security interest in any California real property to U.S. Bank, or any other lender, and have no relationship to the alleged claim.
11. Even a cursory inspection of the Deed of Trust submitted with the U.S. Bank claim, shows that the Borrowers are Antonio and Maria Gonzales, husband and wife as joint tenants. The Debtors in this case are Antonio and Veronica Gonzales.
12. If U.S. Bank had done any checking after being notified of their error, they would have

1 easily been able to discover that the Social Security numbers are different.

2 13. Ironically, at the same time U.S. Bank was alleging a claim against Debtors, the real owners  
3 of the California property, Antonio and Maria Gonzales, were attempting to refinance the  
4 property but have been unable to do so because of the bankruptcy claim. A copy of a  
5 statement sent to Debtors' counsel from the real owner of the California property is  
6 attached as Exhibit "C".

7 14. As a result of this frivolous claim, Debtors have been caused unnecessary worry,  
8 aggravation and expense, including attorneys' fees to bring this action.

9 15. Additionally, as a direct and proximate result of Claimants' neglect, the non-party owners  
10 of the property have been caused considerable angst and damage as their rightful property  
11 has been subject to a hold caused by the false accusations of bankruptcy.

12 WHEREFORE, Debtors respectfully request this Court to dismiss the Claim filed by U.S.  
13 Bank in its entirety, award debtor reasonable attorneys' fees and such other relief as this Court  
14 deems just and necessary under the circumstances.

15  
16 Dated: November 24, 2009.

17  
18 **THE LAW OFFICE OF BARRY W. ROREX, PLC**

19 By /s/ Barry W. Rorex  
20 **Barry W. Rorex, Attorney for Debtors**  
21 **Antonio Gonzales and Veronica Gonzales**  
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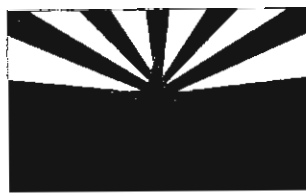
1 A copy of the foregoing was electronically transmitted via ecf  
2 and sent by U.S. Mail this 24th day of November, 2009 to:

3 Mark S. Bosco  
4 Tiffany & Bosco P.A.  
5 2525 East Camelback Road  
6 Third Floor  
7 Phoenix, AZ 85016

8 Chapter 13 Trustee  
9 Dianne C. Kerns  
10 7320 N. LaCholla, #154  
11 PMB413  
12 Tucson, AZ 85741

13 /s/ Barry W. Rorex  
14 Barry W. Rorex  
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**EXHIBIT**  
**“A”**



LAW OFFICE  
OF  
**BARRY W. ROREX**

September 16, 2009

***VIA FACSIMILE (602) 255-0192***

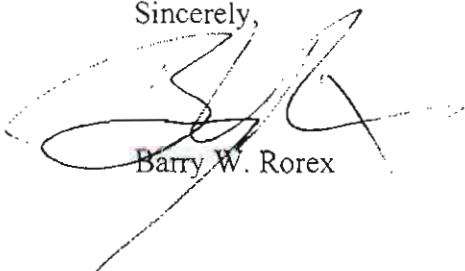
Mark S. Bosco, Esq.  
Tiffany & Bosco P.A.  
2525 East Camelback Road  
Suite 300  
Phoenix, AZ 85016

Re: 4:09-bk-21243-JMM  
Antonio Gonzalez and Veronica L. Gonzales  
Claim #9

Dear Mr. Bosco:

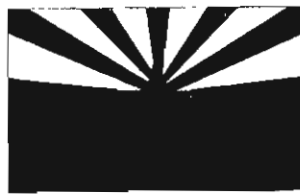
On September 15, 2009 you filed a claim in the above-referenced case on behalf of U.S. Bank. It appears that this claim was filed in error as the subject property was never owned by my clients. I would appreciate your withdrawing the claim at your earliest convenience.

Sincerely,



Barry W. Rorex

**EXHIBIT**  
**“B”**



LAW OFFICE  
OF  
**BARRY W. ROREX**

October 2, 2009

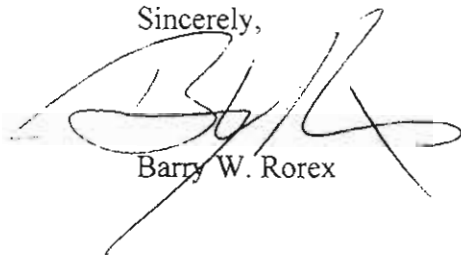
Mark S. Bosco, Esq.  
Tiffany & Bosco P.A.  
2525 East Camelback Road  
Suite 300  
Phoenix, AZ 85016

Re: 4:09-bk-21243-JMM  
Antonio Gonzalez and Veronica L. Gonzales  
Claim #3 (Ammended)

Dear Mr. Bosco:

Your client, Home Loan Services, Inc., continues to send me mail concerning the above-referenced bankruptcy case. Because I believe it would be improper for me to respond directly to the company, I am once again alerting you that your client has filed a claim against the wrong person. My clients do not own the property referenced by Home Loan Services, Inc. As you have now filed an objection to my clients' Chapter 13 Plan, I am filing an Objection to your claim.

Sincerely,



Barry W. Rorex



**EXHIBIT**  
**“C”**

## Affidavit

To Whom It May Concern:

This is Antonio Gonzalez I have received a notice from my bank stating that I am in a bankruptcy and that they can not give me my modification because I am in this bankruptcy I need your help in order to clarify this misunderstanding.

My wife has talked to Christy in your office and she wanted me to send you and affidavit,

Please use this letter as and **affidavit** stating that I Antonio Gonzalez is not the same individual as the one stated on the bankruptcy with the number 4:09-Bk-21243-JMM filed on or about August 31, 2009 which is your client.

This is not me I am in California and my SS does end with the 7696 however the other digits are not the same please send proof to my bank that this is not me the person that you are representing.

Information is:

First Franklin Bank (800) 346 6437

Loan # **1044874668**

1384 Pinedale Ave

Bloomington Ca, 92316

Should you have any questions please feel free to contact me at 562 842-6229

Thank you in advance for all your help in regards to this matter

  
Antonio Gonzalez